

**INTERLOCAL AGREEMENT BETWEEN THE
BRUSHY CREEK REGIONAL UTILITY AUTHORITY
AND THE VILLAGE OF VOLENTE**

This Interlocal Agreement Between the Brushy Creek Regional Utility Authority and the Village of Volente (“ILA”) is made by and between the Brushy Creek Regional Utility Authority, (the “BCRUA”) a local government corporation composed of the cities of Cedar Park, Leander, and Round Rock (the “Cities”) and the Village of Volente (“Volente”), a Texas general law city.

RECITALS

WHEREAS, the Cities have an obligation to preserve and protect the public health, safety, and welfare of their more than 500,000 citizens by providing a dependable and adequate source of safe drinking water; and

WHEREAS, the BCRUA was created by the Cities to design, construct and operate a regional water transmission and treatment system to provide the Cities with drinking water; and

WHEREAS, each of the Cities has contracted with the Lower Colorado River Authority for water stored in Lake Travis; and

WHEREAS, the BCRUA has completed construction of a 17 MGD water treatment plant (the “Treatment Plant”) located in the City of Cedar Park; and

WHEREAS, in order for the Cities to have a dependable method of accessing their contracted water in times of severe drought, it is necessary for the BCRUA to design, construct, and operate a deep-water intake facility and maintenance building (the “Intake Facility”), a raw water transmission line, and a pumping facility (the “Pumping Facility”), (collectively referred to as the “System”) to transmit the water from Lake Travis to the Treatment Plant; and

WHEREAS, after receiving the results of an engineering study, the BCRUA determined that certain property within the city limits of Volente (“Site 4”) was the preferred site for the Intake Facility and the Pumping Facility; and

WHEREAS, Volente preferred that the Intake Facility and the Pumping Facility be located on certain property previously owned by LCRA (“Site 8”); and

WHEREAS, following significant negotiation, BCRUA and Volente entered into a Memorandum of Understanding (“MOU”) which provided that Volente would support Site 4 as the location of the Intake Facility, if BCRUA would locate the Pumping Facility on Site 8, and construct an underground tunnel (“Tunnel”) instead of an open-cut trench to house the raw water transmission line; and

WHEREAS, with Volente’s support, BCRUA’s request to move the Pumping Facility to Site 8 was approved; and

WHEREAS, changing the location of the Pumping Station from Site 4 to Site 8 and constructing the Tunnel instead of an open-cut trench will significantly increase the cost to the BCRUA by approximately \$6,000,000; and

WHEREAS, Volente understands and agrees that the Intake Facility will now be located on Site 4, and the Tunnel will be constructed in part within the city limits of Volente; and

WHEREAS, Volente has an obligation to preserve and protect the public health, safety, and welfare of its citizens by reasonably regulating development within its city limits; and

WHEREAS, in furtherance of said obligation, Volente has adopted the Ordinances (as defined below) regulating development within its city limits; and

WHEREAS, BCRUA agrees that it intends to comply with Volente's Ordinances reasonably regulating development within the city limits of Volente; and

WHEREAS, the parties now wish to set forth their agreement regarding the design, construction, and operation of the Intake Facility and Tunnel in Volente;

NOW THEREFORE, the BCRUA and Volente now wish to set forth their agreement regarding the design, construction, and operation of the Intake Facility in Volente, as set forth below:

ARTICLE I DEFINITIONS

"BCRUA" means the Brushy Creek Regional Utility Authority, a local government corporation created by the home rule cities of Cedar Park, Leander, and Round Rock to provide a dependable and adequate supply of treated water to their citizens.

"Intake Facility" means the deed-water intake facility, maintenance building, and accessory facilities to be constructed and operated on Site 4, for the purpose of accessing raw water from Lake Travis.

"Ordinances" means the validly adopted ordinances of Volente reasonably regulating development and construction in Volente, attached hereto as "Exhibit A."

"Pumping Facility" means the pumps, buildings, and related facilities to be constructed and operated on Site 8 for the purpose of pumping raw water to the Treatment Plant.

"Site 4" means the tract of land owned by the BCRUA in Volente on which the Intake Facility will be constructed.

"Site 8" means the tract of land owned by the BCRUA on which the Pumping Facility will be constructed.

“System” means the Intake Facility, the Tunnel, and the Pumping Facility.

“Tunnel” means the underground tunnel for the raw water transmission line between the Intake Facility and the Pumping Facility.

“Volente” means the Village of Volente, a Texas general law city.

ARTICLE II BCRUA’S ACKNOWLEDGMENTS AND REPRESENTATIONS

BCRUA and the Cities acknowledge and agree that Volente has a legitimate governmental interest in protecting the public health, safety, and welfare of its citizens by regulating development in the city limits of Volente. In furtherance of the aforesaid interest, Volente has adopted the Ordinances to regulate development within the city limits of Volente. With respect to the design, construction, and operation of the Intake Facility and Tunnel, BCRUA agrees to deal with Volente in good faith with respect to complying with the applicable and reasonable development regulations of Volente as set forth in the Ordinances.

ARTICLE III VOLENTE’S ACKNOWLEDGMENTS AND REPRESENTATIONS

Volente acknowledges and agrees that the BCRUA and the Cities have a legitimate governmental interest in protecting the public health, safety, and welfare of their citizens by providing an adequate supply of clean drinking water. In furtherance of the aforesaid interest, BCRUA has determined that the Intake Facility and Tunnel are critical components of the System to access raw water in Lake Travis in order to provide drinking water to the Cities. Volente acknowledges that the Intake Facility and Tunnel are critical components and that Site 4 is a suitable and appropriate location for the Intake Facility and that the Tunnel must be constructed in part within Volente’s city limits. With respect to the design, construction and operation of the Intake Facility on Site 4, and the Tunnel, Volente agrees to deal with the BCRUA in a reasonable fashion and in good faith with respect to imposing and enforcing the Ordinances.

ARTICLE IV COVENANT OF GOOD FAITH AND FAIR DEALING

BCRUA and Volente each agree and covenant to deal with each other honestly, fairly, and in good faith so that they can discharge their respective duties to protect the public health, safety, and welfare of their respective citizens. This includes the covenant to not unduly restrict, condition, or delay any applications for permits or approvals required for the construction of the Intake Facility and Tunnel.

ARTICLE V
ACCESS TO BCRUA RIGHTS OF WAY

To the extent that it is legal and feasible, BCRUA agrees to allow Volente to use BCRUA's rights of way for future use of the installation of public water lines.

ARTICLE VI
USE OF ROADWAYS

Volente understands that during the construction of the Intake Facility, Tunnel and related facilities, that construction trucks and other vehicles will be utilizing the public roadways within the city limits of Volente. BCRUA agrees that it will gather baseline data on any such roads prior to the beginning of construction. BCRUA agrees that once construction has been completed that it will repair any damaged roads so that they are in a condition at least as good as before construction started. BCRUA agrees that it will agree to a similar arrangement with Travis County regarding county roadways.

ARTICLE VII
PROTECTION OF PRIVATE WELLS

BCRUA agrees that it will use its best efforts to establish a water well monitoring program that will include any private domestic wells that are located within four hundred feet on either side of the Tunnel. Volente understands that the success of the program depends on the voluntary cooperation of the affected land owners. If the landowners do not voluntarily allow BCRUA access to their property, then the success of such a program will be adversely affected.

ARTICLE VIII
VOLENTE'S ACCESS TO WATER

After the BCRUA System is constructed Volente would like to have access to the System to supply water to its citizens. The BCRUA agrees to consider this in good faith and to grant access if it is deemed feasible. Volente understands that it will need to contract with the LCRA for the legal right to withdraw water from Lake Travis. Volente also understands that the BCRUA System is being designed to serve the three Cities and there is no excess capacity being contemplated at this time. Finally, Volente understands that it will be solely responsible for the costs of connecting to the BCRUA System.

ARTICLE IX
PROFESSIONAL SERVICES FOR VOLENTE

BCRUA understands that Volente has limited resources and has a need for legal and engineering services to assist Volente in the preparation of this ILA and the review of design documents and the applications for permits and approvals for the construction of the Intake Facility and Tunnel. BCRUA agrees to reimburse Volente for the reasonable engineering and attorney's fees up to a maximum amount of \$25,000. BCRUA agrees that Volente's engineering representative will be permitted to attend and observe design and construction meetings that involve the Intake Facility.

ARTICLE X GENERAL PROVISIONS

10.01 Authority. This ILA is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Section 402.001, *Texas Local Government Code*.

10.02 Severability. The provisions of this ILA are severable and, if any provision of this ILA is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this ILA shall not be affected and this ILA shall be construed as if the invalid portion had never been contained herein.

10.03 Payments from Current Revenues. Any payments required to be made by a Party under this ILA shall be paid from current revenues or other funds lawfully available to the Party for such purpose.

10.04 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this ILA.

10.05 Entire Agreement. Except as otherwise expressly provided herein, this ILA contains the entire agreement of the Parties regarding the use of construction cost savings from Phase 1A of the BCRUA regional treatment and distribution project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter. The Parties confirm that further agreements regarding the Regional Project are contemplated and shall not be affected or limited by this ILA.

10.06 Amendments. Any amendment of this ILA must be in writing and shall be effective if signed by the authorized representatives of the Parties.

10.07 Applicable Law; Venue. This ILA shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Williamson County, Texas.

10.08 Notices. Any notices given under this ILA shall be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

BCRUA:

Tom Gallier, General Manager
Brushy Creek Regional Utility Authority
221 E. Main St.
Round Rock, Texas 78664

With copy to:

Stephan L. Sheets
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

VILLAGE OF VOLENTE:

Ken Beck, Mayor
Village of Volente
16100 Wharf Cove
Volente, Texas 78641

With copy to:

Tom Buckle
Scanlan, Buckle & Young, Inc.
602 West 11th Street
Austin, Texas 78701

10.09 Force Majeure. Parties shall not be deemed in violation of this ILA if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

10.10 Counterparts. Effect of Partial Execution. This ILA may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

10.11 Authority. Each party represents and warrants that it has the full right, power and authority to execute this ILA.

This ILA is effective on the date last entered below:

(Signatures on following pages)

**BRUSHY CREEK REGIONAL UTILITY
AUTHORITY**

By: _____
Frank Leffingwell, President

Date: _____

VILLAGE OF VOLENTE

By: _____
Ken Beck, Mayor

Date: _____

EXHIBIT “A”
(Ordinances)